Before the
Federal Communications Commission
Washington, D.C. 20554

#CC 04M-03

02968

In the Matter of   )   EB Docket No. 03-241
)
ROGER THOMAS SCAGGS   )   File No. EB-02-IH-0886
)
Advanced Class Amateur Radio Operator and   )
Licensee of Amateur Radio Station W5EBC   )

<u>MEMORANDUM OPINION AND ORDER</u>

Issued   January 22, 2004   ;   Released: January 26, 2004

By *Order to Show Cause*, DA 03-3738, released November 21, 2003 ("*OSC* "), the Chief, Enforcement Bureau, pursuant to delegated authority, designated this proceeding for hearing   The issues include inquiry into the effect of the felony conviction of Roger Thomas Scaggs ("Mr. Scaggs") on his qualifications to be and to remain a Commission licensee and, in light of the evidence adduced, whether Mr Scaggs' "Amateur Radio Advanced Class License W5EBC" should be revoked   *OSC*, at para. 6 [1] In order to avail himself of the opportunity to be heard and the right to present evidence at the hearing, the *OSC* provided, *inter alia*, that Mr Scaggs shall file a written appearance stating that he will appear at the hearing and present evidence on the specified issues. *OSC*, at para 7   Such notice of appearance was required to be filed within 30 days after the release of the *OSC*. *Id*

The *OSC* was released on November 21, 2003, and was sent by Certified Mail, Return Receipt Requested, to Mr. Scaggs   Consequently, Mr Scaggs' notice of appearance was due to be filed no later than December 21, 2003   The Return Receipt indicates that the *OSC* was delivered on November 28, 2003. The Commission's records reflect that, to date, no written (or other) notice of appearance has been filed by, or on behalf of, Mr Scaggs.[2] Moreover, a prehearing conference was held on January 21, 2004, and no one attended or entered an appearance on behalf of Mr. Scaggs   Under all of these circumstances, and pursuant to Section 1 92(a)(1) of the Commission's Rules and paragraph 8 of the *OSC*, this constitutes a waiver of the hearing

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[1] On May 28, 1998, the Commission granted Mr Scaggs' license application Approximately six months later, Mr Scaggs was convicted for the March 1996 murder of his wife and sentenced to a 32-year prison term   His conviction was affirmed, and his request for rehearing was overruled   *OSC*, at para 2 and note 2

[2] It must be noted that Mr Scaggs did send a letter, dated December 19, 2003, to the Chief of the Enforcement Bureau In his letter, Mr Scaggs stated that he could not appear for the hearing in this matter because he is incarcerated, and requested that the Commission consider his written response. Mr Scaggs recited the reasons why he believes he has the requisite qualifications to remain a Commission licensee, and urged that his license not be revoked This letter does not constitute "a written appearance stating that [the respondent] will appear at the hearing and present evidence on the matters specified in the [*OSC*]." Section 1 91(c) of the Rules, *see also OSC*, at para 7   Indeed, rather than stating that he will appear and present evidence, Mr. Scaggs has specifically stated that he will *not* appear In this regard, the fact that Mr Scaggs is incarcerated is not of controlling significance.   Suffice it to say, Mr Scaggs could have "appeared" in this proceeding through legal counsel Section 1 91(c) of the Rules (written appearance shall be filed by the respondent, "personally or by his attorney")

Accordingly, pursuant to Section 1 92(c) of the Commission's Rules and paragraph 8 of the *OSC*, IT IS ORDERED that the hearing proceeding in the above-captioned matter IS TERMINATED, and that this proceeding IS CERTIFIED to the Commission.

IT IS FURTHER ORDERED that a copy of this Memorandum Opinion and Order SHALL BE MAILED by Certified Mail, Return Receipt Requested, to:

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Hughes Unit
Route 2 Box 4400
Gatesville, TX 76597

Charles R Burton, Esquire
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FEDERAL COMMUNICATIONS COMMISSION

Arthur I Steinberg
Administrative Law Judge